

CC:IT&A:03
WMJoseph

JUN - 4 1991

Regional Counsel
Southwest Region
Attn: Gary Benford

Assistant Chief Counsel (Income Tax & Accounting)

Computation and Payment of Interest

This is in response to your FAX of February 22, 1991, requesting assistance on the ARC (Examination)'s request for a legal opinion on several issues concerning interest. The first concerns recomputation of tax modules in the Internal Revenue Manual and the second concerns periods of limitations relating to interest assessments and abatements.

Per our telephone conversation with Bill Hardeman of your office, we understand that the computational issue in the manual does not require an immediate answer. We are forwarding that issue to Branch 2 of our office (CC:IT&A:02), which has jurisdiction over interest questions. With respect to the period of limitations and abatement issues, we reviewed the memorandum from District Counsel, Austin, to the Director, Austin Service Center, dated October 19, 1990, and agree with the conclusions in Items 1, 2, and 3 of the memorandum.

The first item concerns the period of limitation for the taxpayer 1) to claim interest on overpayments of tax due from the Service to the taxpayer and 2) to claim as overpayments interest on underpayments paid by the taxpayer to the Service. In the first situation, as the result of a claim filed by a taxpayer, the Service refunded tax and interest paid by the taxpayer but failed to pay additional interest that the taxpayer alleges is due under section 6611 of the Code. The District Counsel memorandum cited Rev. Rul. 57-242, 1957-1 C.B. 452, as authority for the proposition that any claim for additional interest in such situations is subject to 28 U.S.C. section 2401 (1988) and 28 U.S.C. section 2501 (1988) rather than the limitation provisions of section 6511 of the Code. Accordingly, suit by a taxpayer to collect overpayment interest must be brought within 6 years from the date of the refund and the claim procedures and limitations of sections 6511 and 7422 of the Code are inapplicable to such actions. Under Rev. Rul. 57-242, taxpayers may make informal requests to review the computation of interest on such an overpayment. However, the making of such a request does not stay the period of limitations for bringing suit.

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The second situation concerns a claim by the taxpayer that the Service failed to compute underpayment interest on a deficiency correctly. In that situation, the Service determined interest on an underpayment and collected it along with the underlying underpayment of tax. The taxpayer is arguing that section 6601(e)(1) of the Code somehow extends the period of time to claim a refund of the allegedly overpaid interest to 6 years.

We agree with District Counsel that the taxpayer's argument is without merit. Because section 6601(e)(1) of the Code defines interest as tax for all purposes of the Code other than for deficiency purposes, the limitations in section 6511(a) (as well as in section 6511(b), if applicable) apply to interest paid by the taxpayer that is considered an overpayment. We do not agree with the taxpayer that section 6601(e) extends the provisions of section 6601(g), which provides that interest may be assessed and collected at any time during the period within the tax to which the interest relates, so as to override the provisions of section 6511.

Alexander Proudfoot Co. v. United States, 454 F.2d 1379 (Ct. Cl. 1972) is directly on point. In that case, the taxpayer sued the United States for pre-notice interest it had paid on deficiencies. The claims for refund were filed well after the period set out in section 6511 of the Code. The taxpayer argued that the 6-year period of limitations in 28 U.S.C. section 2401 applied. The court distinguished between a refund of interest paid by a taxpayer and statutory interest payable by the Government on the overpayment, holding that the interest in the former situation required compliance with the requirements of section 6511 of the Code, whereas interest in the latter situation was not covered by that provision.

Thus, deficiency interest or interest on an underpayment of tax charged by the Service under section 6601(a) of the Code is subject to the limitation periods in sections 6511(a) and 7422(a) ("claim for credit or refund of an overpayment" and "recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected"). While those sections literally do not apply in a situation in which the Service might owe additional interest under section 6611 to a taxpayer because there was never a "payment" to start the running of a period of limitation to file a claim, there was such a payment in the second situation described in the District Counsel memorandum.

The second item concerns abatement of interest under section 6404(e)(1) of the Code. We agree with the District Counsel that any excessive or erroneously computed interest resulting in an overpayment generally should be abated, where appropriate, under section 6404(a) and not section 6404(e). Based on this, we reserve comment on District Counsel's discussion of section 6404(e), noting that future cases may require a determination

whether the computation of interest might, in some circumstances, constitute a mechanical act for purposes of that section. In any case, the Service's refusal to abate interest under section 6404(e) is purely discretionary and any action claiming an overpayment of interest asserted by the Service and previously paid by the taxpayer is subject to the limitations in sections 6511 and 7422. Brahms v. United States, 18 Cl. Ct. 471 (1989).

Finally, as noted above, we agree with District Counsel that taxpayers have 6 years from the date of an overpayment to file a claim for recovery of incorrectly computed interest on an overpayment. See Rev. Rul. 56-606, 1956-2 C.B. 959, and Rev. Rul. 57-242.

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By (signed) Michael D. Finley
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